

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

NOU HER,
Petitioner,
v.
MENDOTA PRISON,
Respondent.

) Case No.: 1:23-cv-0272 JLT CDB (HC)
)
) ORDER ADOPTING FINDINGS AND
) RECOMMENDATIONS AND DISMISSING THE
) PETITION FOR WRIT OF HABEAS CORPUS
) WITHOUT LEAVE TO AMEND AND WITHOUT
) PREJUDICE
)
) (Doc. 7)
)

Nou Her is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. (Doc. 1.) On March 13, 2023, the assigned magistrate judge completed a preliminary screening of the petition. (Doc. 7.) The magistrate judge found Petitioner’s claims addressed “conditions of Petitioner’s confinement rather than its legality,” because “Petitioner alleges cruel and unusual punishment and deliberate indifference in violation of the Eighth Amendment, negligence, and medical malpractice.” (*Id.* at 3.) Therefore, the magistrate judge recommended petition be dismissed without leave to amend. (*Id.* at 4.) However, the magistrate judge also observed Petitioner’s claims may be raised in a civil rights action pursuant to 42 U.S.C. § 1983 and directed the Clerk of Court to send Petitioner a copy of the form complaint for Section 1983 action.

The Court served the Findings and Recommendations on March 13, 2023 and advised Petitioner that he must file any objections within 21 days of the date of service. (Doc. 7 at 4-5.) In addition, the Court warned Petitioner that the “failure to file objections within the specified time may result in the

1 waiver of rights on appeal.” (*Id.* at 5, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014);
2 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).) Petitioner did not file objections, and the
3 deadline to do so has expired.

4 Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court conducted a de novo review of this case.
5 Having carefully reviewed the entire matter, this Court concludes the Findings and Recommendations
6 are supported by the record and by proper analysis. Accordingly, the Court **ORDERS**:

- 7 1. The Findings and Recommendations dated March 13, 2023 (Doc. 7) are **ADOPTED**.
- 8 2. Petitioner’s petition for writ of habeas corpus (Doc. 1) is **DISMISSED** without leave to
9 amend, and without prejudice to filing a civil rights action 42 U.S.C. § 1983.
- 10 3. The Clerk of the Court is directed to close this case.

11
12 IT IS SO ORDERED.

13 Dated: April 11, 2023


14 UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28